



**IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH**

**CRM-M-43788-2024 (O&M)**

**Date of Decision:-20.01.2025**

Mohammad Saad

.....Petitioner

Versus

State of Haryana

.....Respondent

**CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI**

Present:- Mr. Sunil Panwar, Advocate for the petitioner.

Mr. Vishal Kashyap, DAG, Haryana

**JASGURPREET SINGH PURI J.(Oral)**

1. The present petition has been filed under Section 483 of BNSS, for grant of regular bail to the petitioner in case bearing FIR No.183 dated 26.06.2020 under Sections 22 (c ) of NDPS, 1985 (Act 61 of 1985) registered at Police Station Sadar Tauru, District Nuh, Mewat (Haryana).

2. Learned counsel appearing on behalf of the petitioner submitted that the petitioner has been in custody for 1 year and 8 months and 05 out of 17 cited prosecution witnesses have already been examined, including the material witnesses. He further submitted that it is a case where the allegations against the petitioner in the FIR were that the police got secret information and on the basis of secret information the FIR was registered, in which it was mentioned that the petitioner is bringing some contraband and on the basis of reliable sources, he can be apprehended on the spot along with the contraband.



Thereafter, as per the FIR itself the police saw a bag containing 6,800 tablets of Tramadol Hydrochloride and 19,200 tablets of Alprazolam, which was lying on the spot. The person holding the bag ran away and as per the prosecution, the petitioner was the person who ran away from the spot. In this way, the present FIR came to be registered against the petitioner. Learned counsel further submitted that in fact the reason for the registration of the FIR was that a relative of the petitioner was a witness in one of the cases pertaining to a secret informer and it was because of that reason that the present FIR came to be lodged against the petitioner.

3. He further asserted that after the registration of the present FIR the petitioner filed a petition for the grant of anticipatory bail before this Court, in which an interim order was passed by this Court and the petitioner in furtherance of the aforesaid order joined the investigation as and when he was called upon to do so for about an year. However, later on the petition for the grant of anticipatory bail was dismissed because this Court had directed the Inspector General of Police to inquire into the matter as to whether there was any connection between the petitioner and the secret informer. The Inspector General of Police apprised this Court that there was no such connection that neither the petitioner nor any of his relatives was a witness in any of the cases of the secret informer. However, it was also so stated that the name of the secret informer could not be disclosed because of risk of attack him and in this way, this Court vide order dated 18.05.2022 had dismissed the petition for grant of anticipatory bail to the petitioner. The petitioner thereafter preferred an SLP before Hon'ble Supreme Court which was however, dismissed. After the dismissal of the SLP, the petitioner himself surrendered before the Court



and in this way he has been in custody for about 01 year and 08 months and considering the aforesaid facts and circumstances, the petitioner may be considered for the grant of regular bail.

4. Learned counsel further submitted that during the course of the trial, the police official who had received information from the secret informer namely Krishan Kumar, has been examined and one of the police officials, namely Bir Singh who arrived at the spot later, has also been examined. The counsel referred to the cross-examinations of both the aforesaid officials, which have been attached alongwith status report. In the cross-examinations, both police officials stated that the description i.e., name, height, etc. of the person who was holding the aforesaid bag and who ran away was not recorded. He further submitted that it is a case where neither the petitioner was found at the spot nor his description, etc., was recorded by any of the police officials in any of the records and it has been specifically stated by both police officials in their cross-examinations while deposing before the Trial Court. Therefore, since there has been no recovery from the conscious possession of the petitioner and no description of the petitioner was recorded by the police officials during their depositions before the Trial Court, the mere fact that the petitioner's name was recorded in the FIR does not raise any presumption that the petitioner has committed any offence or that any recovery has been effected from the petitioner and in this way the Bar contained under Section 37 of NDPS, will not apply to the present petitioner. He further submitted that the petitioner is otherwise having clean antecedents except for one case under the NDPS Act, wherein he was already enlarged on bail and therefore that itself cannot become a ground for denial of bail to the



petitioner and considering the aforesaid custody of the petitioner, he may be considered for the grant of regular bail.

5. On the other hand, learned State counsel submitted that, insofar as the custody of the petitioner is concerned, the same is correct. It is also correct that the aforesaid two police officers have already been examined and in their cross-examinations they have stated that the description i.e. name, of the person who had left the bag was not incorporated in any of the records. He further submitted that since the recovery effected in the present case falls under the category of commercial quantity, the prayer of the petitioner for the grant of regular bail would be hit by the bar contained under Section 37 of the NDPS Act.

6. He also submitted that after the dismissal of the petition for the grant of anticipatory bail, the petitioner did not surrender immediately but preferred an SLP before Hon'ble Supreme Court. It was only after the dismissal of the SLP that he surrendered himself before the Court. Learned counsel further referred to para No. 9 of the status report, stating that the petitioner had surrendered himself before the Court and in this way the investigation got delayed. He also submitted that the petitioner is involved in one more case under the NDPS Act.

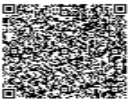
7. I have heard the learned counsels for the parties.

8. It is a case where the petitioner had preferred a petition for the grant of anticipatory bail, and earlier he was granted interim bail. However, the petition for the grant of anticipatory bail was dismissed by this Court on 18.05.2022. Thereafter, he preferred an SLP before Hon'ble Supreme Court and as per learned counsels for the parties, the same was also dismissed.



Subsequently, the petitioner surrendered before the concerned court. The trial of the case has already commenced and 05 out of 17 cited prosecution witnesses have already been examined. Recovery in the present case is stated to be 6800 tablets of *Tramadol Hydrochloride* and 19200 tablets of *Alprazolam*. As per the prosecution story, the police received a secret information from a secret informer with regard to the fact that the petitioner can be apprehended alongwith some contraband. However, as per the prosecution story, the petitioner fled away from the spot, after leaving the aforesaid bag. Learned counsel for the petitioner has referred to the statements of two police officials, one of whom, namely Bir Singh, stated that he arrived at the spot later but recorded the statement of the police officer who was present there. However, this officer could not provide the description i.e. name etc. of the person who had fled away from the spot by leaving the bag. It is a case of the learned counsel for the petitioner that the petitioner has been falsely implicated because of his involvement as a witness in one of the cases pertaining to the secret informer. However, the name of the secret informer could not have been disclosed because of obvious reasons.

9. The petitioner has already faced incarceration for about 1 year and 8 months. Considering the aforesaid facts and circumstances, this Court is of the view that, in light of the petitioner's custody and the fact that the actual recovery was not effected from the conscious possession of the petitioner since, according to the prosecution, he fled away from the spot and the contrabands were found on the ground, therefore, the bar under Section 37 of the NDPS Act will not apply to the present petitioner in the light of Article 21 of the Constitution of India



10. Considering the totality of the facts and circumstances of the present case, this Court deems it fit and proper to grant regular bail to the petitioner.
11. Consequently, the present petition is allowed. The petitioner shall be released on regular bail, if not required in any other case, subject to furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate concerned.
12. However, anything observed hereinabove shall not be treated as an expression of opinion on the merits of the case and is meant for the purpose of deciding the present petition only.

(JASGURPREET SINGH PURI)  
JUDGE

20.01.2025

shweta

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|---------------------------|---|--------|
| Whether speaking/reasoned | : | Yes/No |
| Whether reportable        | : | Yes/No |